HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION Nos. 3087 AND 1050 OF 2007

W.P.No.3087 OF 2007

Between:

Gudapati Bhanoji Rao & others

….. Petitioners.

And

The Andhra Pradesh Pollution Control Board,
Rep. by its Member Secretary, Hyderabad
& others

…. Respondents

Counsel for respondent Nos. 1 and 2 : Shri S.V. Bhatt
Counsel for respondent No.4 : Government Pleader for Environment, Forests, Science and Technology
Counsel for respondent No.8 : Shri Kowturu Vinay Kumar
Counsel for respondent No.9 : Government Pleader for Industries.

W.P.No. 1050 OF 2007

Between:

Gudapati Naga Padmavathi & another

… Petitioners

And

A.P. Pollution Control Board,
Rep. by its Member Secretary,
Hyderabad & others

… Respondents

Counsel for the petitioner : Shri C. Kodandaram
Counsel for respondent Nos.1 and 2 : Shri S.V. Bhatt
Counsel for respondent No.5 : Smt. K. Aruna
Counsel for respondent No.3 and 4 : Government Pleader for Industries and Commerce
Counsel for respondent No.7 : Shri Kowturu Vinay Kumar

:: COMMON ORDER ::

11.04.2007

Per G.S. Singhvi, CJ

Letter dated Nil sent by the residents of Sai Nagar Colony, Gannavaram, Krishna District with the complaint that running of fly ash brick kiln by M/s. MSB & GRB Fly Ash Brick Unit is causing pollution and affecting their lives, was treated by one of us (the Chief Justice) as a petition in public interest and was registered as Writ Petition No.3087 of 2007.

Smt. Gudapati Naga Padmavathi and Shri P.V.S.R. Das, who are residents of Sai Nagar, Gannavaram have jointly filed Writ Petition No.1050 of 2007 for closure of the brick kiln operated by M/s. MSB & GRB Fly Ash Brick Unit.

In response to the notice issued by the Court in Writ Petition No.3087 of 2007, affidavits have been filed by Smt. S. Swarajya Lakshmi, Proprietor of M/s. MSB & GRB Fly Ash Brick Unit as also by Shri A. Sudhakar, General Manager, District Industries Centre, Vijayawada.

We have heard learned counsel for the parties and perused the records.

In paragraphs 4 to 6 of her affidavit, Smt. S. Swarajya Lakshmi has averred as under:

> "4. I submit as per the directions issued in the above referred writ petition, I had approached the Commissioner of Industries and filed the representation. I submit the Commissioner has constituted a committee in his proceedings dt.9-11-2006 for conducting joint inspection of the unit. I submit the committee has conducted joint inspection on 23-11-2006 and examined various aspects. I submit, the representatives of A.P. Pollution Control Board have also participated in the inspection. I submit the committee has submitted a report and on the basis of the said report the Commissioner by an order dt.6-1-2007 restored the permanent SSI registration certificate subject to fulfilment of the following

conditions:

A) Height of the compound wall shall be increased to 10 feet.

B) Raw Material and Mixer Plant shall be kept within a closed premises.

C) The unit shall work from 6 AM to 6 PM only.

5. I submit that I have complied with all the above conditions and informed the same to the authorities by submitting a representation on 1-2-2007.

6. I submit since I have taken all precautionary measures as stipulated above, there is no justification for the petitioners to raise the objections. I submit the report shows that our immediate neighbours have not expressed any objection to the running of the unit. It is only the neighbour living at a distance, who has raised an objection to the running of the unit, on the complaint that it is causing dust and air pollution. The committee recommended for imposition of the above conditions. I submit the writ petitioners are not my neighbours. Further, as stated in my explanation there are only 6 residential houses in the area. Further, there are other commercial units i.e., 2 poultry farms (six sheds), one HP Gas godown and three Tractor repair sheds. Further, the unit is located in outskirts of the village. As such, after thorough verification of all the issues including the location of the site (whether it is in residential area or industrial area) only I have been permitted by the authorities to establish the unit. I submit since I have complied with all the conditions imposed by the committee on the basis of recent inspection conducted by them. I may be permitted to continue the unit for which licence is valid upto 2010."

In paragraphs 5 and 7 of his affidavit, Shri A. Sudhakar has averred as under:

"5. I further submit that basing on the direction of this Hon'ble Court dt.11-10-2006, the 8th respondent herein had filed a representation/appeal before the Commissioner of Industries, A.P., Hyderabad. The Commissioner of Industries had constituted a committee on 16-12-2006 vide Lr.No.11/1/2464 with the following members:

1. Sri H. Shivaram, Joint Director, O/o. Commissioner of Industries, A.P., Hyd.
2. Sri S. Venkata Rao, RDO, Nuzvid, Krishna District.

3. Sri V. L. N. Reddy, President, FAPSIA, Hyderabad.
4. Sri I.A. Prasad, Environmental Engineer, APPCB, Vijayawada.

I further submit that the Committee had inspected the 8th respondent unit on 23-12-2006 and made the following recommendations:

1) Height of the compound wall of the industry shall be increased to 10 feet.
2) Raw Material and Mixer Plant shall be kept within the closed premises.
3) The unit shall work from 6 a.m. to 6 p.m. only.

Thereafter the Commissioner of Industries had sought the opinion of the Govt. Pleader on the recommendations made by the Joint Inspection Committee. The Govt. Pleader opined that the permanent SSI Registration Certificate to the 8th respondent has to be restored in the event the 8th respondent unit complies with the conditions made by the Joint Inspection Committee.

7. I submit that the 8th respondent unit had not complied with the conditions made by the joint inspection committee, but nevertheless represented to this office that he had complied with the conditions made by the Joint Inspection Committee. Therefore, to verify the true and correct facts, this respondent had contacted the Environmental Engineer, APPCB, Vijayawada, on 22-1-2007 for making a joint inspection to verify the fulfilment of the conditions. But the Environmental Engineer, APPCB, Vijayawada had informed that they have received a notice from the Hon'ble High Court in the matter and expressed his inability to attend for the joint inspection for restoration of permanent registration as the matter is now sub judice at this stage. I further submit thereafter this office has received a letter dt.22-7-2007 from the Govt. Pleader addressed to the Commissioner of Industries marking a copy for this office informing about Writ Petition No.1050/07 being filed by writ petitioners. I submit that the 8th respondent unit had not complied with the conditions made by the joint inspection committee and therefore this office has not restored the permanent registration and the cancellation made on 21-9-2006 still holds good."

A careful scrutiny of the two affidavits shows that the assertions contained in the affidavit of Smt. S. Swarajya Lakshmi regarding compliance of the conditions imposed by the joint inspection committee constituted by the Commissioner of Industries are far from being true. Rather, she is guilty of making a false statement that she has complied with the conditions enumerated in the report of the joint inspection committee.

By taking cognizance of the apparently incorrect statement made in the affidavit filed on behalf of his client, we asked Shri Kowturu Vinay Kumar, learned counsel for M/s. MSB & GRB Fly Ash Brick Unit as to why the Court may not order closure of the industry. Learned counsel responded to the Court's observation by stating that the brick kiln has been closed and that his client will shift the industry from the present site after obtaining necessary permission and consent from Industries Department and Andhra Pradesh Pollution Control Board (for short, 'the Board'). At the same time, he made a request that the Court may direct the concerned authorities to process and decide the application(s) made by his client for establishing the unit at the new site.

In view of the statement made by Shri Kowturu Vinay Kumar, the writ petitions are disposed of as infructuous with liberty to M/s. MSB & GRB Fly Ash Brick Unit to apply to the authorities of the Industries Department and the Board for establishing the unit at the new site. In order to obviate delay in the processing of the applications, we direct General Manager, District Industries Centre, Vijayawada and the competent authority of the Board to decide the same within a maximum period of three months from the date of submission.

As a sequel to disposal of the writ petitions as infructuous, W.P.M.P.No.1316 of 2007 filed by the petitioners in Writ Petition No.1050 of 2007 for interim relief is also disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

11.04.2007

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